

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 785 - SB 768

March 16, 2021

SUMMARY OF BILL: Requires the Board of Parole (BOP) to establish a digital function that a victim or a victim's representative is authorized to use to electronically submit a victim impact statement video at an inmate's parole hearing or parole revocation. Requires the digital function to allow a victim to indicate if he or she wishes for a submitted video statement to be used in future hearings involving the same inmate and offense.

Removes application fees associated with a restricted driver license issued after failure to comply with an installment plan for payment of criminal offense litigation taxes, court costs, and fines.

Makes changes to periods between certain BOP hearings, required conditions or limitations prior to release, and determinations of revocation of parole.

Creates a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing.

Establishes mandatory reentry supervision.

Prohibits a cause of action from being brought against an employer or contracting party in outlined circumstances.

Requires the Department of Correction (DOC) to pay an eligible county an additional accreditation stipend per convicted felon if certain criteria are met. Authorizes Tennessee community colleges and Tennessee's Colleges of Applied Technology to assist county governments in the development of programs and contract and partner with local government to provide programming.

States that the Tennessee Correction Institute (TCI) has the power and duty to inspect local jails, lock ups, and workhouses to determine whether the county has achieved tier 1 or tier 2 accreditation for purposes of stipend compensation and to report such determinations to DOC.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – \$8,500/FY21-22/Strategic Technology Solutions

**Increase State Expenditures – \$18,150,200/FY21-22/General Fund
\$20,192,300/FY22-23/General Fund
\$21,495,700/FY23-24/General Fund
Exceeds \$21,221,700/FY24-25 and Subsequent Years
/General Fund**

Decrease State Expenditures – \$59,510,800 Incarceration*

Increase Local Revenue – \$13,998,200/FY21-22 and Subsequent Years

**Increase Local Expenditures – Up to \$13,998,200/Permissive/
FY21-22 and Subsequent Years**

Other Fiscal Impact - Changes in parole considerations may lead to the increase use of parole and a reduction in state incarceration expenditures; however, the timing and net impact of such changes are unable to be quantified with reasonable certainty.

In future fiscal years, there will be a decrease in state incarceration expenditures resulting from programs provided at local jails to felons reducing recidivism. The timing and amount of any decrease is dependent upon multiple unknown factors and cannot be quantified with reasonable certainty.

The Governor’s proposed budget for FY21-22, on page A-35, recognizes a recurring increase in state expenditures from the General Fund of \$20,492,600 (\$4,000,000 + \$16,492,600).

Assumptions:

Victim Impact Statement

- The work to develop, maintain, and technically support the application required by the proposed legislation will be performed by the Department of Finance and Administration’s Strategic Technology Solutions (STS).
- Development of the application will require an estimated 40 hours at a rate of \$91 per hour for a one-time increase in state expenditures in FY21-22 of \$3,640 (40 x \$91).
- Information Technology (IT) oversight of the application development will require an estimated 40 hours at a rate of \$105 per hour for a one-time increase in state expenditures in FY21-22 estimated to be \$4,200 (40 x \$105).
- Business analyst oversight of the project will require an estimated five hours at a rate of \$105 per hour for a one-time increase in state expenditures in FY21-22 estimated to be \$525 (5 x \$105).

- FileNet modifications for the project will require an estimated one hour at a rate of \$96 per hour for a one-time increase in state expenditures in FY21-22 estimated to be \$96 (1 x \$96).
- The proposed legislation is effective upon becoming law for development of the application and January 1, 2022 for other purposes which is approximately 50 percent of FY21-22; therefore, this analysis estimates recurring costs for 50 percent of FY21-22 and 100 percent of FY22-23 and subsequent years.
- The increase in state expenditures for application server space, web server space, and notification accounts is estimated to be \$1,008 in FY21-22 and increase by \$1,008 each subsequent fiscal year.
- The recurring increase in state expenditures associated with an email address or the application is \$69.
- The proposed legislation will result in one IT support specialist position for STS to review video information and offer technical support to application users.
- The salary for an IT support specialist is \$43,610. The proposed legislation will result in a recurring increase in state expenditures estimated to be \$59,600 (\$43,610 salary + \$13,990 benefits + \$1,400 communications + \$600 supplies).
- The one-time increase in state expenditures in FY21-22 associated with the additional position is estimated to be \$4,300.
- The proposed legislation will result in an increase in state expenditures to the General Fund in FY21-22 of \$43,100 { \$3,640 + \$4,200 + \$525 + \$96 + [(\$1,008 + \$69 + \$59,600) / 2] + \$4,300 }.
- The proposed legislation will result in a corresponding increase in state revenue to STS in FY21-22 estimated to be \$8,461 (\$3,640 + \$4,200 + \$525 + \$96).
- The proposed legislation will result in an increase in state expenditures to the General Fund in FY22-23 of \$61,685 (\$1,008 + \$1,008 + \$69 + \$59,600).
- The proposed legislation will result in an increase in state expenditures to the General Fund in FY23-24 of \$62,693 (\$1,008 + \$1,008 + \$1,008 + \$69 + \$59,600).
- The proposed legislation will result in a recurring increase in state expenditures to the General Fund of estimated to exceed \$63,701 (\$1,008 + \$1,008 + \$1,008 + \$1,008 + \$69 + \$59,600) in FY22-23 and subsequent fiscal years and continue to grow based on server space cost.

Restricted Driver License

- Pursuant to Tenn. Code Ann. § 55-50-321(a), every driver license application is required to be accompanied by a nonrefundable \$2 fee.
- Pursuant to Tenn. Code Ann. § 40-24-105(b), a person failing to comply with a repayment plan of criminal offense litigation taxes, court costs, and fines; receiving notification of such nonpayment from the Department of Safety (DOS); and failing to provide proper documentation within 30 day of receipt of such notification will have his or her driver license suspended by the DOS and be required to pay a \$65 fee for a restricted license.
- Based on information provided by the DOS, there have been no revocations of a driver license for nonpayment of such agreements since 2018.

- Any impact to the DOS resulting from the removal of application fees for the issuance of restricted licenses in such instances is estimated to be not significant.
- Any impact to state or local revenue resulting from collection of criminal fine revenue resulting from the removal of such fee is estimated to be not significant.

Board of Parole Considerations

- The proposed legislation makes multiple changes to parole and revocation determinations, including:
 - Limiting the period of time between parole hearings when declining, revoking, or rescinding parole to a maximum of six years;
 - Prohibiting BOP from requiring a condition or limitation be completed prior to release on parole unless the DOC recommends such completion prior to release;
 - Revising the term required for a revocation of parole that does not involve a new felony or Class A misdemeanor;
 - Prohibiting BOP's finding that the release from custody at the time would depreciate the seriousness of the crime and promote disrespect of the law from being the sole basis for denying parole; and
 - Removing the BOP's right to deny parole to an inmate who has made no attempt to improve educational, vocational, or employment skills while incarcerated.
- The proposed legislation may result in a recurring increase in parole and result in a decrease in state incarceration expenditures. The precise timing and impact resulting from such changes are dependent on multiple unknown factors and cannot be determined with reasonable certainty.

Release Eligibility

- The proposed legislation creates a presumption that an eligible inmate meeting the outlined criteria must be released on parole upon the inmate reaching his or her release eligibility date (RED), unless good cause is shown as to why the inmate should not be released.
- The proposed legislation defines an eligible inmate as an inmate who:
 - Is currently serving a sentence for one of the following:
 - A Class E or Class D felony offense;
 - A nonviolent Class A, B, or C felony offense, and;
 - Is determined to be low risk to reoffend or most appropriately supervised in the community under the most recent validated risk and needs assessment;
 - Has successfully completed recommended DOC programming determined by a validated risk and needs assessment or can complete any programming while on parole supervision;
 - Has not received a serious disciplinary violation within one year of the inmate's parole hearing; and
 - Has not been convicted of a violent sexual offense, sexual offense, or sex offense.
- Based on information provided by DOC, an average of 8 nonviolent Class A felony inmates remained in DOC custody after their RED each year over the past three years.
- This analysis estimates that 25 percent, or 2 (8 x 25%), inmates released after RED will meet the criteria for an eligible inmate.

- Based on information provided by DOC, such inmates spent an average of 1,365 days incarcerated after RED.
- Population growth will not impact these admissions.
- Pursuant to Tenn. Code Ann. § 9-4-210, two offenders will be released each year serving 1,365 fewer days. The annualized decrease in state incarceration expenditures is estimated to be \$219,656 ($\$80.46 \times 1,365 \times 2$).
- Based on information provided by DOC, an average of 88 nonviolent Class B felony inmates remained in DOC custody after their RED each year over the past three years.
- This analysis estimates that 50 percent, or 44 ($88 \times 50\%$), inmates released after RED will meet the criteria for an eligible inmate.
- Based on information provided by DOC, such inmates spent an average of 972 days incarcerated after RED.
- Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 4 ($44 \times 8.3\%$) additional admission for a total of 48 ($44 + 4$).
- Pursuant to Tenn. Code Ann. § 9-4-210, 44 offenders will be released each year serving 972 fewer days. The annualized decrease in state incarceration expenditures is estimated to be \$3,753,942 ($\$80.46 \times 972 \times 48$).
- Based on information provided by DOC, an average of 94 nonviolent Class C felony inmates remained in DOC custody after their RED each year over the past three years.
- This analysis estimates that 75 percent, or 71 ($94 \times 75\%$), inmates released after RED will meet the criteria for an eligible inmate.
- Based on information provided by DOC, such inmates spent an average of 913 days incarcerated after RED.
- Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 6 ($71 \times 8.3\%$) additional admission for a total of 77 ($71 + 6$).
- Pursuant to Tenn. Code Ann. § 9-4-210, 77 offenders will be released each year serving 913 fewer days. The annualized decrease in state incarceration expenditures is estimated to be \$5,656,418 ($\$80.46 \times 913 \times 77$).
- Public Chapter 488 (2019), created a presumption that an inmate convicted of a Class E or Class D nonviolent offense is to be released on parole upon the inmate reaching his or her release eligibility date, unless good cause is shown as to why the inmate should not be released.
- Any impact to Class D or Class E felony RED resulting from the proposed legislation is estimated to be not significant.
- Creating a presumption that eligible inmates will be released on RED will lead to a recurring annualized decrease in state incarceration expenditures estimated to be \$9,630,016 ($\$219,656 + \$3,753,942 + \$5,656,418$).

Mandatory Reentry Supervision

- The proposed legislation defines an eligible inmate for mandatory reentry supervision as an inmate who is serving a felony sentence that occurred on or after July 1, 2021 and:
 - Is eligible for parole consideration;

- Has one year or less remaining until expiration of all sentences that the inmate is serving or set to serve or reaches the inmate’s release eligibility date with less than one year remaining until expiration;
- Does not have an active detainer for new or untried charges or sentences to serve in other jurisdictions;
- Has not been classified as maximum or close custody for disciplinary reasons for at least two years; and
- If the inmate has previously had the inmate’s probation or parole revoked, has served at least six months since returning to custody after revocation of parole or parole.
- The proposed legislation requires eligible inmates to be released on mandatory reentry supervision one year prior to the eligible inmate’s sentence expiration or if not eligible for parole, one year prior to sentence expiration, upon reaching RED and outlines supervision requirements.
- The proposed legislation specifies that DOC is required to determine inmate eligibility and the BOP is required to issue a certificate of mandatory reentry supervision to eligible offenders.
- The proposed legislation defines an ineligible inmate for mandatory reentry supervision as an inmate who is serving a felony sentence that occurred on or after July 1, 2021 that does not meet the outlined criteria for an eligible inmate, does not have an active detainer for new or untried charges or sentences to serve in other jurisdictions, and is incarcerated when the inmate’s sentence expires. Ineligible inmates are required to be released subject to mandatory reentry supervision for a period of one year following an inmate’s sentence expiration.
- Based on information provided by DOC, an estimated 122 inmates serving time for a Class A felony offense would eligible inmates for mandatory reentry supervision.
- This analysis assumes such inmates will be released one year, or 365.25 days, prior to the expiration of their sentences.
- The average time served for a Class A felony offense is 14.41 years. As such, the first possible fiscal year impact is FY36-37 and is not included in this fiscal analysis.
- Based on information provided by the DOC, the chart below outlines the estimated decrease in state incarceration expenditures over the next 10 years by felony offense for eligible inmates.

Offense	FY21-22	FY22-23	FY23-24	FY24-25	FY25-26	FY26-27	FY27-28	FY28-29	FY29-30	FY30-31	10 Year Impact
A											\$0
B								\$ 13,929,919	\$ 13,929,919	\$ 13,929,919	\$41,789,757
C			\$ 37,117,063	\$ 37,117,063	\$ 37,117,063	\$ 37,117,063	\$ 37,117,063	\$ 37,117,063	\$ 37,117,063	\$ 37,117,063	\$296,936,504
D		\$ 13,430,323	\$ 13,074,664	\$ 13,074,664	\$ 13,074,664	\$ 13,074,664	\$ 13,074,664	\$ 13,074,664	\$ 13,074,664	\$ 13,074,664	\$118,027,637
E		\$ 4,672,694	\$ 4,672,694	\$ 4,672,694	\$ 4,672,694	\$ 4,672,694	\$ 4,672,694	\$ 4,672,694	\$ 4,672,694	\$ 4,672,694	\$42,054,249
										Total	\$498,808,148

- Pursuant to Tenn. Code Ann. § 9-4-210, the annualized decrease in state incarceration expenditures resulting from mandatory reentry supervision is estimated to be \$49,880,815 (\$498,808,148 / 10).

Mandatory Reentry Personnel

- The proposed legislation will require additional probation/parole managers and officers to supervise eligible and ineligible inmates as indicated by the table below.

Position	FY21-22	FY22-23	FY23-24
Probation/ Parole Manager	5	4	2
Probation/ Parole Officer	34	26	18
Total New Personnel Each Year	39	30	20

- The recurring salary and benefits for each Probation/Parole Manager position is estimated to be \$69,855 (\$54,120 salary + \$15,735 benefits).
- The recurring salary and benefits for each Probation/Parole Officer position is estimated to be \$61,264 (\$46,752 salary + \$14,512 benefits).
- Each position will require recurring funding for travel, supplies, training, software, etc. estimated to be \$10,500 per position.
- In addition, personnel will require vehicles estimated at \$25,000 each as indicted by the schedule outlined in the table below.

	FY21-22	FY22-23	FY23-24
Vehicles	23	17	11

- The total one-time increase in state expenditures in FY21-22 associated with vehicles for probation/parole managers and probation/parole officers overseeing eligible and ineligible inmates is estimated to be \$575,000 (23 x \$25,000).
- The total one-time increase in state expenditures in FY22-23 associated with vehicles for probation/parole managers and probation/parole officers overseeing eligible and ineligible inmates is estimated to be \$425,000 (17 x \$25,000).
- The total one-time increase in state expenditures in FY23-24 associated with vehicles for probation/parole managers and probation/parole officers overseeing eligible and ineligible inmates is estimated to be \$275,000 (11 x \$25,000).
- The total increase in state expenditures in FY21-22 associated with probation/parole managers and probation/parole officers overseeing eligible and ineligible inmates is estimated to be \$3,416,751 [(\$69,855 x 5) + (\$61,264 x 34) + (\$10,500 x 39) + \$575,000].
- The total increase in state expenditures in FY22-23 associated with probation/parole managers and probation/parole officers overseeing eligible and ineligible inmates is estimated to be \$5,454,035 [(\$69,855 x 5) + (\$61,264 x 34) + (\$10,500 x 39) + (\$69,855 x 4) + (\$61,264 x 26) + (\$10,500 x 30) + \$425,000].
- The total increase in state expenditures in FY23-24 associated with probation/parole managers and probation/parole officers overseeing eligible and ineligible inmates is estimated to be \$6,756,497 [(\$69,855 x 5) + (\$61,264 x 34) + (\$10,500 x 39) + (\$69,855 x 4) + (\$61,264 x 26) + (\$10,500 x 30) + (\$69,855 x 2) + (\$61,264 x 18) + (\$10,500 x 20) + \$275,000].
- The total increase in state expenditures in FY24-25 and subsequent years associated with probation/parole managers and probation/parole officers overseeing eligible and

ineligible inmates is estimated to be \$6,481,497 [(\$69,855 x 5) + (\$61,264 x 34) + (\$10,500 x 39) + (\$69,855 x 4) + (\$61,264 x 26) + (\$10,500 x 30) + (\$69,855 x 2) + (\$61,264 x 18) + (\$10,500 x 20)].

Sentence Calculations

- The proposed legislation will require the DOC Sentence Management Services division to calculate changes in time for sentences.
- This will require four Sentence/Docketing Analyst II positions and two Sentence/Docketing Analyst III positions.
- The recurring salary and benefits for each Sentence/Docketing Analyst II position is estimated to be \$57,115 (\$43,194 salary + \$13,921 benefits).
- The recurring salary and benefits for each Sentence/Docketing Analyst III position is estimated to be \$62,285 (\$47,628 salary + \$14,657 benefits).
- Each position will require recurring funding for travel, supplies, training, software, etc. estimated to be \$6,800 per position.
- The total recurring increase in state expenditures in FY21-22 and subsequent fiscal years associated with calculating sentences is estimated to be \$393,830 {(\$57,115 x 4) + (\$62,285 x 2) + [\$6,800 x (4 + 2)]}.

Cause of Action

- The proposed legislation prohibits a cause of action being brought against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor based solely upon the fact that employee or independent contractor has been previously convicted of a criminal offense, specifies if an action is brought that such previous conviction of a criminal offense evidence is not admissible, and outlines when such prohibition does not apply.
- Any impact to the court system resulting from the proposed legislation is estimated to be not significant.

Stipend Program

- The proposed legislation requires the DOC to pay an accreditation stipend to eligible counties for each convicted felon housed by the county for which the county receives reimbursement and compensation pursuant to Tenn. Code Ann. § 41-8-106.
- The proposed legislation defines an eligible county as a county that applies to DOC for an accreditation stipend and DOC determines meets the following criteria:
 - The county houses convicted felons pursuant to a contract with the state or while they are awaiting transfer to a state facility;
 - All felony offenders housed by the county are administered a department-approved validated risk-needs assessment upon admission;
 - The county provides evidence-based programming to felony offenders that matches the risks and needs of the offender, as determined through a department-approved validated risk-needs assessment;
 - All felony offenders housed by the county are eligible to participate in evidence-based programming that is matched to the offender's risks and needs;

- The county makes reasonable efforts to select evidence-based programming that fits the demonstrated needs of the county's felony offender population by serving a substantial portion of the offenders, rather than a narrow subset of offenders;
- The county is compliant with, or making reasonable efforts to comply with, the federal Prison Rape Elimination Act of 2003; and
- The county achieves tier 1 or tier 2 accreditation by the TCI pursuant to subdivision.
- The proposed legislation requires the TCI to determine Tier 1 and Tier 2 accreditation standards by rule.
- Any action taken by a county to contract with the state to house state convicted felons and apply for an accreditation stipend is permissive.
- This analysis assumes all eligible counties will meet DOC requirements.
- This analysis estimates the proposed legislation will impact reimbursement rates for 7,300 offenders.
- The proposed legislation requires a \$3 per day per convicted felon for an eligible Tier 1 county and a \$6 per day per convicted felon for an eligible Tier 2 county.
- The criteria and requirements for Tier 1 and Tier 2 are unknown; however, it is reasonable to assume the 25 percent of the inmates will be housed in a Tier 1 eligible county and 75 percent will be housed in a Tier 2 eligible county.
- The recurring increase in state expenditures in FY21-22 and subsequent fiscal years resulting from the proposed legislation is estimated to be \$13,998,206 $[(7,300 \times 25\% \times \$3 \times 365.25) + (7,300 \times 75\% \times \$6 \times 365.25)]$.
- The proposed legislation will result in a corresponding recurring increase of local revenue in FY21-22 and subsequent fiscal years estimated to be \$13,998,206.
- Some counties will be incentivized to establish such programs, while counties with existing programs may choose to invest additional funds into such programs. The exact extent to which local revenue will be invested into such programs is unknown; however, the permissive recurring increase in local expenditures in FY21-22 and subsequent fiscal years estimated to be up to \$13,998,206 to provide materials, training, and staff necessary to offer such programming and ensure DOC compliance.
- This analysis assumes the DOC will select and approve evidence-based programs that will result in a reduction in recidivism rates among convicted felons.
- This analysis assumes the proposed legislation will reduce recidivism and result in a decrease in state incarceration expenditures in future fiscal years; however, due to multiple unknown factors, including: the timing of any release of any participating felon, the program offerings, and the timing of any offense and sentence avoided through participation in programs, such decrease cannot be quantified with reasonable certainty.
- Based on information previously provided by the Tennessee Board of Regents, any impact to community colleges or Colleges of Applied Technology resulting from assisting county governments in the development of such programs will be accomplished utilizing existing resources. Any fiscal impact is estimated to be not significant.

DOC Oversight

- The proposed legislation requires the DOC to determine the eligibility of eligible counties.

- In order to accomplish the required oversight, DOC will require additional personnel.
- The DOC will require three Correctional Counselor 3 positions for quality assurance of programs.
- The recurring salary and benefits for each of the three positions is estimated to be \$58,535 (\$44,412 salary + \$14,123 benefits).
- Additionally, the three positions will require recurring funding for travel, supplies, user licenses, training, etc., estimated to be \$36,300 per year.
- The one-time increase in state expenditures in FY21-22 for of the three positions is estimated to be \$13,800 [(\$1,800 computer + \$2,800 office furniture) x 3].
- The total increase in state expenditures in FY21-22 associated with eligibility oversight is estimated to be \$298,305 {[((\$58,535 + \$36,300) x 3) + \$13,800]}.
- The total increase in state expenditures in FY22-23 and subsequent years associated with eligibility oversight is estimated to be \$284,505 [(\$58,535 + \$36,300) x 3].

Accreditation Determinations

- The proposed legislation requires TCI determine accreditation standards and inspect local jails, lock-ups, and workhouses to determine if an eligible county has achieved Tier 1 or Tier 2 accreditation and to report such determinations to DOC.
- Any impact to TCI to determine such standards and include such information in local jails, lock-ups, and workhouses will be accomplished utilizing existing resources. Any fiscal impact is estimated to be not significant.

Total Impact

- The total increase in state revenue to STS in FY21-22 estimated to be \$8,461.
- The total annualized decrease to state incarceration expenditures resulting from the proposed legislation is estimated to be \$59,510,831 (\$9,630,016 + \$49,880,815).
- The total increase in state expenditures in FY21-22 resulting from the proposed legislation is estimated to be \$18,150,192 (\$43,100 + \$3,416,751 + \$393,830 + \$13,998,206 + \$298,305).
- The total increase in state expenditures in FY22-23 resulting from the proposed legislation is estimated to be \$20,192,261 (\$61,685 + \$5,454,035 + \$393,830 + \$13,998,206 + \$284,505).
- The total increase in state expenditures in FY23-24 resulting from the proposed legislation is estimated to \$21,495,731 (\$62,693 + \$6,756,497 + \$393,830 + \$13,998,206 + \$284,505).
- The total increase in state expenditures in FY24-25 and subsequent years resulting from the proposed legislation is estimated to exceed \$21,221,739 (\$63,701 + \$6,481,497 + \$393,830 + \$13,998,206 + \$284,505).
- The total increase of local revenue in FY21-22 and subsequent fiscal years is estimated to be \$13,998,206.
The total permissive recurring increase in local expenditures in FY21-22 and subsequent fiscal years estimated to be up to \$13,998,206.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the*

estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/mj